

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ALFREDO BAUTISTA,

Plaintiff

v.

**LOWE'S HOME CENTERS, LLC AND
LOWE'S COMPANIES, INC.**

Defendants.

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**CIVIL CASE NO. _____
JURY TRIAL DEMANDED**

**DEFENDANTS LOWE'S HOME CENTERS, LLC'S AND
LOWE'S COMPANIES, INC.'S (*incorrectly named and an improper party*)
NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. § 1441, Federal Rule of Civil Procedure 81 and Local Rule 81, Defendants LOWE'S HOME CENTERS, LLC AND LOWE'S COMPANIES, INC. (*incorrectly named and an improper party*) (collectively, "LOWE'S") removes to this Court, the state court action described in Paragraph 1 below. Pursuant to 28 U.S.C. § 1446(a), Lowe's sets forth the following "short and plain statement of the grounds for removal."

**I.
THE REMOVED CASE**

1. The removed case is a civil action filed with the 164th Judicial District Court of Harris County, Texas, on September 6, 2022, styled *Alfredo Bautista v. Lowe's Home Centers, LLC and Lowe's Companies, Inc.* under Cause No. 2022-56128 (the "State Court Action").

II.
DOCUMENTS FROM REMOVED ACTION

2. Pursuant to FEDERAL RULE OF CIVIL PROCEDURE 81 and 28 U.S.C. § 1446(a), Lowe's attaches the following documents to this Notice of Removal:

- (a) A list of all parties in the case, their party type and current status;
- (b) a civil cover sheet and certified copy of the state court docket sheet; a copy of all pleadings that assert causes of action (e.g., complaints, amended complaints, supplemental complaints, petitions, counter-claims, cross-actions, third party actions, interventions, etc.); all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court, as required by 28 U.S.C. § 1446(a);
- (c) a complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number and party or parties represented by him;
- (d) A record of which parties have requested trial by jury; and
- (e) The name and address of the court from which the case is being removed.

III.
REMOVAL PROCEDURE

3. Except as otherwise expressly provided by Act of Congress, any civil action brought in a state court of which the district courts of the United States have original jurisdiction may be removed to the United States District Courts for the district and division embracing the place where the action is pending. 28 U.S.C. § 1441. The Houston Division of the Southern District Court of Texas is the United States district and division embracing Harris County, Texas, and the county in which the State Court Action is pending.

4. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings and orders in the State Court Action as of the date of this pleading are attached hereto as ***Exhibit "A"*** and incorporated herein for all purposes.

5. Defendants will promptly give all parties written notice of the filing of this Notice of Removal and will promptly file a copy of this Notice of Removal with the Clerk of the 164th Judicial District Court, of Harris County, Texas, where the State Court Action is currently pending.

IV.
REMOVAL IS TIMELY

6. According to the State Court Action file, Defendants LOWE'S HOME CENTERS, LLC AND LOWE'S COMPANIES, INC. were served with a copy of Plaintiff's Original Petition ("Petition") on September 21, 2022, through service on their respective registered agents.

7. Since the thirtieth day after service of the Petition on Defendant LOWE'S falls on October 9, 2022 this Notice of Removal is being timely filed within the time limits specified in 28 U.S.C. § 1446(b).

V.
VENUE IS PROPER

8. The United States District Court for the Southern District of Texas – Houston Division, is the proper venue for removal of the State Court Action pursuant to 28 U.S.C. § 1441(a) because the 164th Judicial District Court of Harris County, Texas, is located within the jurisdiction of the United States District Court for the Southern District of Texas - Houston Division.

VI.
DIVERSITY OF CITIZENSHIP EXISTS

9. This is a civil action relating to a negligence claim that falls under the Court's original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

10. As admitted in the Petition, Plaintiff is a resident of Houston, Harris County, Texas and is domiciled there.¹

11. Defendant Lowe's Home Centers, LLC is a foreign Limited Liability Company organized and existing under the laws of the State of North Carolina. The Limited Liability Company is comprised of six managing members, Akinjide Falaki who is domiciled in and a resident of the State of North Carolina; David R. Green, who is domiciled in and a resident of the State of North Carolina; Beth R. MacDonald who is domiciled in and a resident of the State of North Carolina, Tiffany L. Mason, who is domiciled in and is a resident of the State of North Carolina; Brandon J. Sink, who is domiciled in and a resident of the State of North Carolina, and Gary White, who is domiciled in and a resident of the State of North Carolina. Additionally, LOWE'S principal office is located at 1605 Curtis Bridge Road in Wilkesboro, North Carolina 28687. Pursuant to 28 U.S.C. § 1332(c)(1), LOWE'S is not a citizen of the State of Texas.

¹ *Id.* Plaintiff's Original Petition at p. 1, ¶ 2.0.

12. Defendant LOWE'S COMPANIES, INC., is incorrectly named and is not a proper party to this lawsuit. Lowe's Companies, Inc. is a foreign corporation organized and existing under the laws of the State of North Carolina. Lowe's Companies, Inc.'s principal office is in Wilkesboro, North Carolina. Pursuant to 28 U.S.C. § 1332(c)(1), Lowe's Companies, Inc. is not a citizen of the State of Texas.

13. Because the Plaintiff is a resident of the State of Texas and Defendants are not, complete diversity of citizenship exists pursuant to 28 U.S.C. § 1332.

VII.
THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

14. Plaintiff alleges in his Original Petition that he seeks damages in monetary relief over \$1,000,000.00.²

15. Based on the aforementioned facts, the State Court Action may be removed to this Court by LOWE'S in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this is a civil action pending within the jurisdiction of the United States District Court for the Southern District of Texas; (ii) this action is between citizens of different states; (iii) the amount in controversy requirement has been satisfied by the Plaintiff pleading monetary relief over \$75,000.00.

VIII.
FILING OF REMOVAL PAPERS

16. Pursuant to 28 U.S.C. § 1446(d), LOWE'S is providing written notice of the filing of this Notice of Removal to all counsel of record and is filing a copy of this Notice with the Clerk of the 164th Judicial District Court of Harris County, Texas, in

² *Id.* Plaintiff's Original Petition at p. 6, ¶ 4.0

which this action was originally commenced.

IX.
CONCLUSION

17. Defendants Lowe's Home Centers, LLC and Lowe's Companies, Inc. hereby remove the above-captioned action from the 164th Judicial District Court of Harris County, Texas, and requests that further proceedings be conducted in the United States District Court for the Southern District of Texas – Houston Division, as provided by law.

Respectfully submitted,

MAYER LLP
2900 North Loop West, Suite 500
Houston, Texas 77092
713.487.2000 / Fax 713.487.2019

By: /s/ Kevin P. Riley

Kevin P. Riley
State Bar No. 16929100
Southern Bar No. 13776
kriley@mayerllp.com
Jason M. Gunderman
State Bar No. 24085349
Southern Bar No. 3395605
jgunderman@mayerllp.com

ATTORNEYS FOR DEFENDANTS
LOWE'S HOME CENTERS, LLC AND
LOWE'S COMPANIES, INC.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on October 7, 2022, the foregoing *Defendants Lowe's Home Centers, LLC's and Lowe's Companies, Inc.'s Notice of Removal* was electronically filed, as required by the United States District Court for the Southern District of Texas, using the Court's CM/ECF filing system, which will provide notice and a copy of this document, with attachments, to the following, who are indicated to be registered ECF filers in the United States District Court for the Southern District of Texas:

Hugo R. Montes
The NMW Law Firm
3 Greenway Plaza, Suite 1575
Houston, Texas 77046
Email: hrmontes@nmwlawfirm.com

COUNSEL FOR PLAINTIFF

☐ E-MAIL
☐ HAND DELIVERY
☐ FACSIMILE
☐ OVERNIGHT MAIL
☐ REGULAR, FIRST CLASS MAIL
☒ E-FILE AND SERVE
☐ E-SERVICE ONLY
☐ CERTIFIED MAIL/RETURN RECEIPT
REQUESTED

/s/ Jason M. Gunderman
Jason M. Gunderman

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ALFREDO BAUTISTA,

Plaintiff,

v.

LOWE'S HOME CENTERS, LLC AND
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Defendants.

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CIVIL ACTION NO. _____
JURY TRIAL DEMANDED

COUNSEL OF RECORD AND INFORMATION
PURSUANT TO 28 U.S.C. § 1446(A)

(1) A list of all parties in the case, their party type (e.g., plaintiff, defendant, intervenor, receiver, etc.) and current status of the removed case (pending, dismissed);

Plaintiff *Alfredo Bautista*

Defendant *Lowe's Home Centers, LLC and Lowe's Companies, Inc.*

The removed case is currently pending.

(2) A civil cover sheet and a certified copy of the state court docket sheet; a copy of all pleadings that assert causes of action; all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court, as required by 28 U.S.C. § 1446(a);

See attached civil cover sheet and documents attached to Defendants' Notice of Removal as *Exhibit "A."*

(3) A complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number and party or parties represented by him;

***Counsel for Plaintiff
Alfredo Bautista***

Hugo R. Montes
State Bar Number: 24098781
Email: hrmontes@nmwlawfirm.com
The NMW Law Firm
3 Greenway Plaza, Suite 1575
Houston, Texas 77046
Phone: 713-714-2563/ Fax: 832-219-1025

***Counsel for Defendants
Lowe's Home Centers, LLC and Lowe's Companies, Inc.***

Kevin P. Riley
State Bar No. 16929100
E-Mail: kriley@mayerllp.com
Jason M. Gunderman
State Bar No. 24085349
E-Mail: jgunderman@mayerllp.com
MAYER LLP
2900 North Loop West, Suite 500
Houston, Texas 77092
P: 713.487.2000 / F: 713.487.2019

(4) A record of which parties have requested a trial by jury (this information is in addition to placing the word "jury" at the top of the Notice of Removal immediately below the case number); and

- Defendants have requested a trial by jury.

(5) The name and address of the court from which the case is being removed.

164th Judicial District Court
Harris County Civil Courthouse
201 Caroline Street, 12th Floor
Houston, Texas 77002
832-927-2380